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July 16, 2003

JUL 16 2003

By Hand Delivery

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

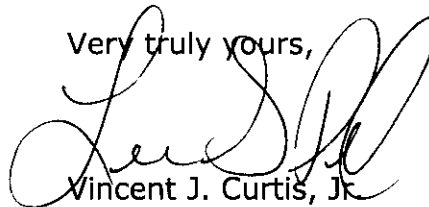
Re: Petition for Rulemaking
Digital Television Table of Allotments - Defiance, Ohio
Pappas Telecasting of America - FRN: 0006-0473-28

Dear Ms. Dortch:

Transmitted herewith is an original and four copies of a Petition for Rulemaking, filed on behalf of Pappas Telecasting of America, to allot DTV Channel 56 at Defiance, Ohio.

Should there be any questions regarding this matter, please contact undersigned counsel.

Very truly yours,



Vincent J. Curtis, Jr.
Lee G. Petro

Counsel for Pappas Telecasting of America

Enclosures

074
MB
03-246

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JUL 16 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of: _____ }

Amendment of Section 73.622(b) }
DTV Table of Allotments }
TV Broadcast Stations }
(Defiance, Ohio) }

RM: _____

TO: Chief, Policy and Rules Division
Media Bureau

PETITION FOR RULEMAKING

Pappas Telecasting of America ("Pappas"), by and through its counsel, hereby submits a "Petition for Rulemaking" to amend the DTV Table of Allotments, 47 C.F.R. § 73.622(b) (2002), for a new allotment on DTV Channel 56 at Defiance, Ohio. This Petition is submitted in conjunction with a Petition for Reconsideration of the dismissal of Pappas' non-mutually exclusive application for NTSC Channel 65 at Defiance, Ohio (BPCT-19960722KK, the "Application") on June 6, 2003.¹

The Application was dismissed because Pappas did not file a Petition for Rulemaking during the July 2000 filing window that permitted applicants for NTSC channels outside the DTV core (2-51) to file petitions to specify channels below Channel 60.² At that time, Pappas could not locate an available channel that would comply with the Commission's rules.

¹ The dismissal of the Application was released on public notice on June 16, 2003. *Broadcast Applications*, Rpt. 36879 (June 16, 2003). Therefore, the Petition is timely filed.

² See *Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations*, Public Notice, 14 FCC Rcd 19,559 (1999), as amended by *Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations Extended to July 15, 2000*, Public Notice, 15 FCC Rcd 4974 (2000).

However, there is pending a rulemaking proposal that would permit the Commission to allot DTV Channel 56 at Defiance.³ The pending rulemaking was initiated by Bowling Green State University, the licensee of Station WBGU-DT, Bowling Green, Ohio, which was 17 months after the close of the July 2000 filing window. The grant of the proposal would substitute DTV Channel 20 for DTV Channel 56 at Bowling Green, Ohio, and would open the door for DTV Channel 56 to be allotted to Defiance, Ohio.⁴

Concurrent with the filing of this Petition, Pappas is submitting a Petition for Reconsideration of the dismissal of the Application, seeking reinstatement in light of these changed circumstances. A copy of the Petition for Reconsideration is attached hereto as Exhibit One. Pappas proposes to amend Section 73.622(b) of the Commission's rules as follows:

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Defiance, Ohio	-	56

with the corresponding amendment to Section 73.606(b) of the Commission's rules as follows:

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Defiance, Ohio	65	-

In support of this Petition, attached as Exhibit A is an Engineering Statement from Smith and Fisher that, should the Bowling Green Petition be granted, the

³ 17 FCC Rcd. 2330 (2002).

⁴ Additionally, the theoretical reference site listed in the attached engineering statement is the same transmitter site specified in the DTV Table of Allotments for Station WBGU-DT. As such, it is not expected that there would be difficulties in receiving Canadian consent to the allotment.

proposed facilities on DTV Channel 56 at Defiance will comply with the Commission's rules, and will not cause any prohibited interference.

Moreover, the public interest would be served by the grant of this Petition for Rulemaking, contingent upon the grant of the rulemaking proceeding in Bowling Green, Ohio. The grant of this Petition would bring a first local television service to Defiance. Also, an allotment would aid in the DTV transition by providing a new DTV-only service to Defiance, thereby encouraging members of the public to invest in DTV receivers.

While Pappas would have preferred that the Bowling Green proceeding been completed prior to the dismissal of the Application, it is necessary to submit this Petition contingent upon the grant of the reallocation of DTV Channel 56 at Bowling Green in light of the dismissal of the Application. To the extent that a waiver of the Commission's rule against filing contingent rulemakings is necessary, in light of the circumstances discussed herein, *e.g.*, the introduction of the first local service to Defiance, Ohio, and the unforeseen changed circumstances, Pappas submits that the public interest would be greatly served by the grant of this waiver request.

Should the petition for rulemaking be granted, and DTV Channel 56 is allocated at Defiance, Ohio, Pappas will amend its application to specify the revised facilities. Should its application for a new construction permit at Defiance be granted, Pappas will construct the facility as authorized.

EXHIBIT A

ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of PAPPAS TELECASTING OF AMERICA, applicant for a new television station on NTSC Channel 65 in Defiance, Ohio (BPCT-19960722KK), in support of its Petition for Rulemaking to substitute DTV Channel 56 for NTSC Channel 65 in Defiance, Ohio.

Our detailed channel search reveals that no NTSC replacement channel is available in the Defiance area that meets the analog spacing requirements of §73.610, as well as the DTV interference criteria of §73.623(c). However, we have determined that DTV Channel 56 can be used in Defiance from a specific site and with specific operating parameters. It is important to note that the allotment of DTV Channel 56 to Defiance is predicated on the Commission's grant of a pending Petition for Rulemaking to substitute DTV Channel 20 for DTV Channel 56 in Bowling Green, Ohio (BPRM-20011218ABQ). Channel 56 in Bowling Green was originally assigned to WBGU-DT.

The proposed site, with coordinates 41° 08' 12", 83° 54' 24", is also that of WBGU-DT. For the purposes of our interference studies, we assumed that an Andrew ALP16M2-HSOC omnidirectional antenna would be side-mounted at the 309-meter level of the existing 332-meter tower. The proposed antenna height is 531 meters above mean sea level, and the main-lobe effective radiated power is 100 kw. Proposed operating parameters are listed in Exhibit B, and Exhibit C is an elevation pattern for the proposed antenna.

The predicted service contours are plotted in Exhibit D. As shown, the entire community of Defiance is contained within the proposed 48 db μ contour, as required by

EXHIBIT A

§73.623(c)(1) of the Rules. Exhibit E is an interference study, which concludes that the proposed facility meets the requirements of §73.623(c)(2) of the Rules with respect to both NTSC and DTV facilities.

It is therefore requested that the FCC delete analog Channel 65 in Defiance, Ohio, by changing §73.606(b) of its Table of [NTSC] Allotments, as follows:

<u>Community</u>	<u>Present Allotments</u>	<u>Proposed Allotments</u>
Defiance, Ohio	65+	

Further, we request that the Commission add commercial Channel 56 in Defiance, Ohio, to its §73.622(b) Digital Television Table of Allotments, as follows:

<u>Community</u>	<u>Present Allotments</u>	<u>Proposed Allotments</u>
Defiance, Ohio		56

I declare under penalty of perjury that the foregoing statements and the attached exhibits, which were prepared by me or under my immediate supervision, are true and correct to the best of my knowledge and belief.



KEVIN T. FISHER

July 15, 2003

PROPOSED OPERATING PARAMETERS

PROPOSED DTV ALLOTMENT
CHANNEL 56 - DEFIANCE, OHIO

Channel Number:	56
Zone:	1
Site Coordinates:	41-08-12 N 83-54-24 W
Antenna Structure Registration Number:	1016071
Tower Site Elevation (AMSL):	221.6 meters
Overall Tower Height Above Ground:	332.1 meters
Overall Tower Height Above (AMSL):	553.7 meters
Effective Antenna Height Above Ground:	309 meters
Effective Antenna Height (AMSL):	531 meters
Average Terrain Elevation (2-10 miles):	225 meters
Effective Antenna Height Above Average Terrain:	306 meters
Antenna Make and Model:	Andrew ALP16M2-HSOC
Orientation:	Omnidirectional
Electrical Beam Tilt:	0.5°
Polarization:	Horizontal
Effective Radiated Power (main-lobe):	100 kw



ANDREW ELEVATION PATTERN

ALP16L2

Type:

Directivity:

Main Lobe

Horizontal

Beam Tilt:

Polarization:

Channel:

Location:

Numeric

16.59

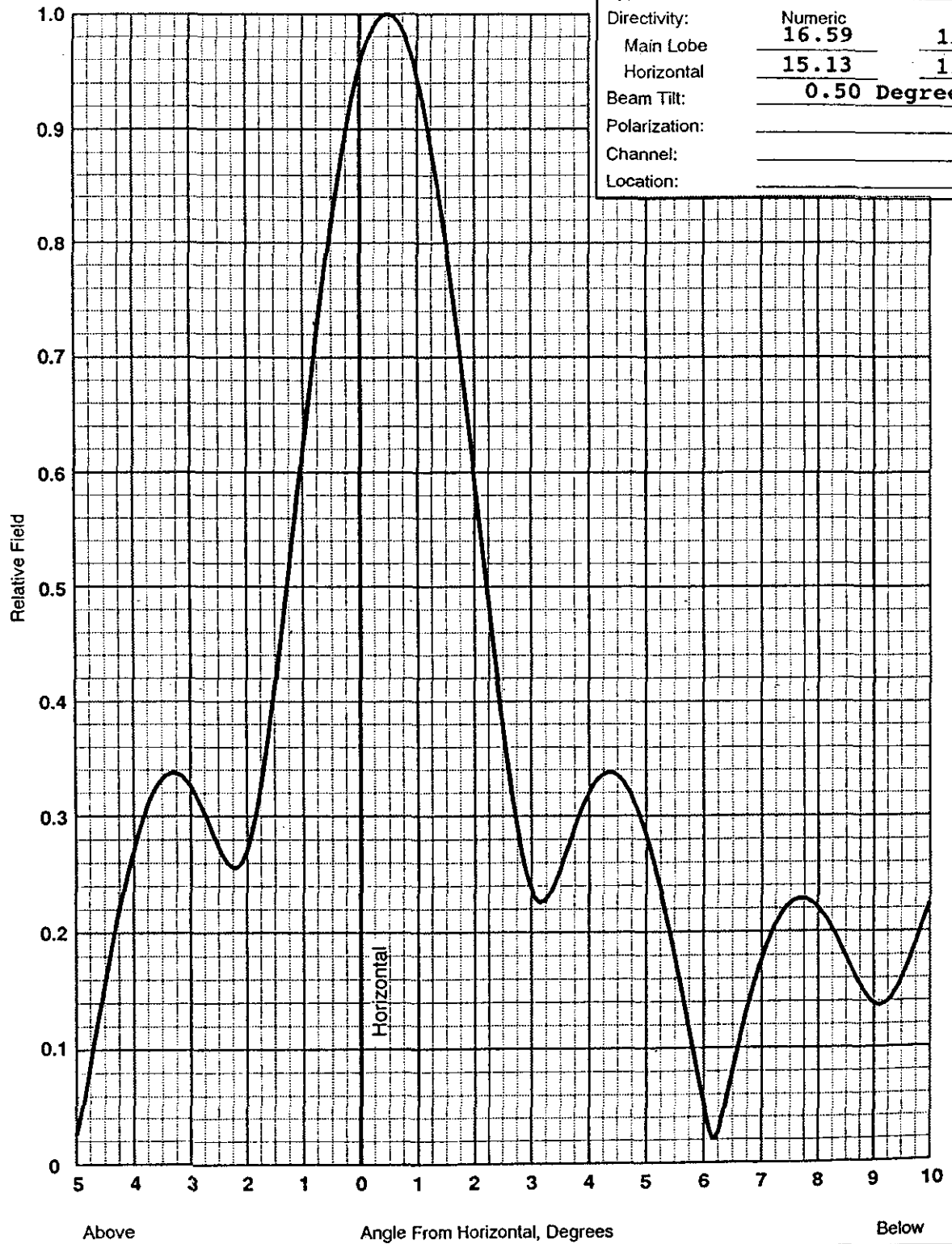
dBd

12.20

15.13

11.80

0.50 Degrees



ANDREW CORPORATION
10500 W. 153rd Street
Orland Park, Illinois U.S.A. 60462

EXHIBIT C

ANTENNA ELEVATION PATTERN

PROPOSED DTV STATION
CHANNEL 56 - DEFIANCE, OHIO

SMITH AND FISHER

CONTOUR POPULATION

48 DBU : 1,080,785

41 DBU : 1,266,309

Smith and Fisher

41 DBU

48 DBU

EXHIBIT D

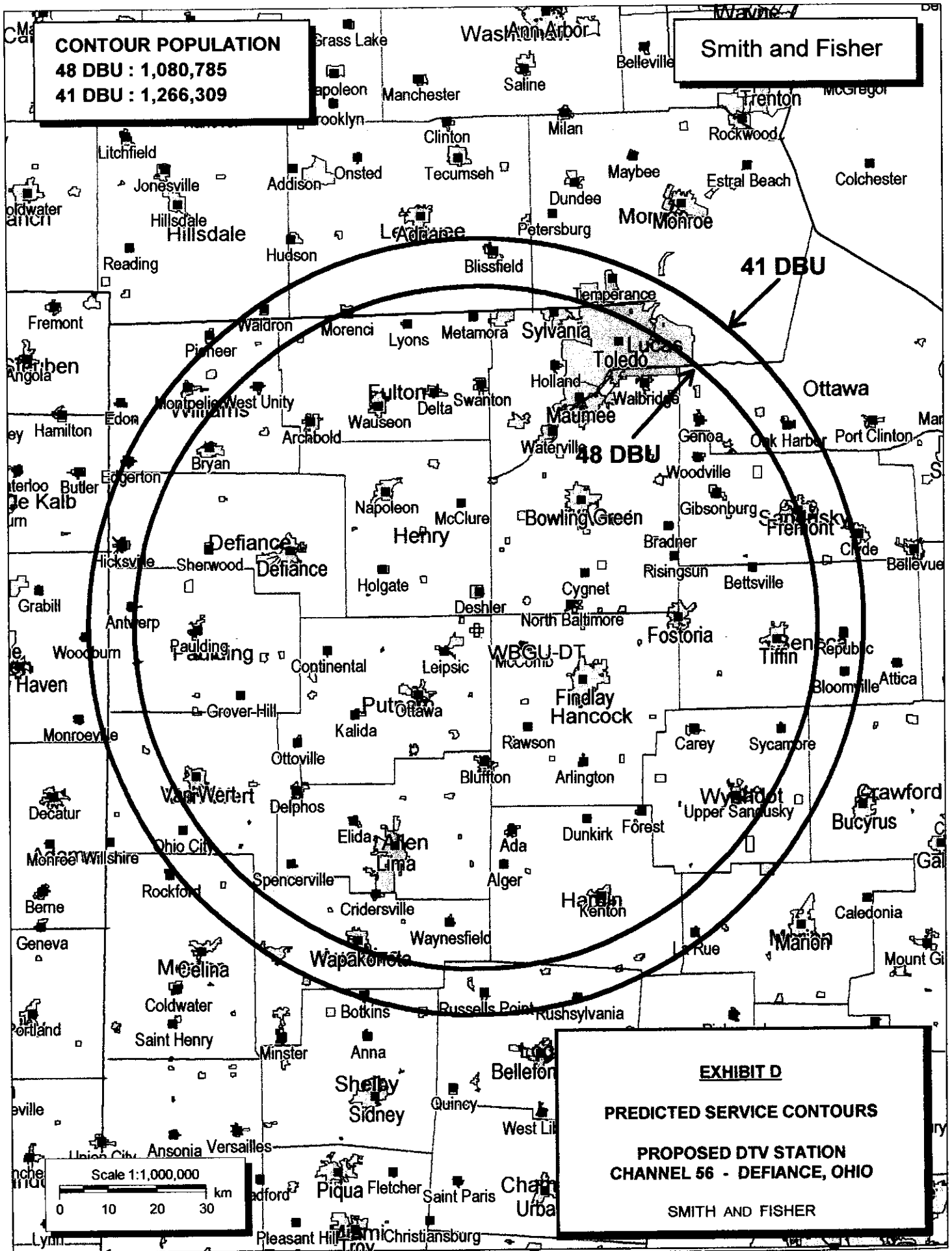
PREDICTED SERVICE CONTOURS

**PROPOSED DTV STATION
CHANNEL 56 - DEFIANCE, OHIO**

SMITH AND FISHER

Scale 1:1,000,000

0 10 20 30 km



ALLOCATION AND INTERFERENCE STUDY

PROPOSED DTV ALLOTMENT
CHANNEL 56 - DEFIANCE, OHIO

An interference study was conducted using the operating parameters of the facility described herein to determine if it meets the FCC's *de minimis* interference requirements of Section 73.623(c)(2) of the Commission's Rules. Specifically, the proposed facility may not cause more than two percent interference to the service population of a DTV or NTSC facility, nor can its interference contribution result in an excess of 10 percent total DTV interference to the service population of any DTV or NTSC facility.

The service area of a DTV station is defined as that which is calculated using the Longley-Rice propagation model to receive a signal of 41 db μ or greater and lies within the predicted 41 db μ contour of the station using the F(50,90) curves, the station's effective radiated power, and 2-10 mile terrain averages along each radial.

In evaluating the interference effect of this proposal, we have relied upon the V-Soft Communications "Probe II" computer program, which has been found generally to mimic the FCC's program. For our studies, we utilized a cell size of 2-kilometers, an increment spacing of 0.1 kilometers, and the 1990 U.S. Census. Changes in interference caused by the proposed allotment facility to other pertinent stations are tabulated in Exhibit E-2.

As indicated, the proposed allotment would not contribute more than two percent DTV interference to the service population of any potentially affected NTSC or DTV station. In addition, this proposal does not result in any NTSC or DTV station receiving more than ten

EXHIBIT E-1

percent total DTV interference to viewers living within the station's authorized or proposed service area.

Therefore, this proposal meets the FCC's *de minimis* interference standards as defined in Section 73.623(c)(3) of the Commission's Rules.

It is also important to note that, using the same Longley-Rice methodology described above, we have determined that the proposed DTV allotment facility does not cause interference to any licensed Class A eligible LPTV station.

EXHIBIT E-2

DE MINIMIS INTERFERENCE ANALYSIS

PROPOSED DTV ALLOTMENT
CHANNEL 56 - DEFIANCE, OHIO

NTSC FACILITIES

				INTERFERENCE LOSSES (POPULATION)									
Call Sign	City, State	Ch.	Grade B Population F(50,50)	NTSC & DTV				NTSC & DTV				Proposal	
				NTSC Only	Without Proposal	Unmasked DTV	% ¹	With Proposal	Unmasked DTV	% ¹	Contribution	% ²	
WTVS(TV)	Detroit, MI	56	4,712,930	5,099	213,422	208,323	4.4	256,927	251,828	5.3	43,505	0.9	
Appl.	Columbus, OH	56	1,425,865	5,906	5,906	0	0	20,912	15,006	1.1	15,006	1.1	

DTV FACILITIES

				<u>INTERFERENCE LOSSES (POPULATION)</u>									
<u>Call Sign</u>	<u>City, State</u>	<u>Ch.</u>	<u>NTSC/DTV³ Grade B Pop. Longley-Rice</u>	<u>NTSC & DTV</u>				<u>NTSC & DTV</u>				<u>Proposal Contribution</u> <u>%²</u>	
				<u>NTSC Only</u>	<u>Without Proposal</u>	<u>Unmasked DTV</u>	<u>%¹</u>	<u>With Proposal</u>	<u>Unmasked DTV</u>	<u>%¹</u>			

- NONE -

¹ Cannot exceed 10% of Grade B Population.

² Cannot exceed 2% of Grade Population.

³ Cannot exceed 2% of Grade Population.

EXHIBIT ONE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of:	}	
	}	
Pappas Telecasting of America	}	BPCT-19960722KK
	}	
For a New NTSC Television Facility	}	
On Channel 65 at Defiance, Ohio	}	

To: Chief, Media Bureau
Federal Communications Commission

PETITION FOR RECONSIDERATION

Pappas Telecasting of America ("Pappas"), by and through its attorneys, and pursuant to Section 1.106 of the Commission's rules, hereby submits this "Petition for Reconsideration" of the dismissal of the above-referenced application on June 6, 2003.¹ Pappas filed the application for a new NTSC television facility on Channel 65 at Defiance in 1996, and on June 6, 2003, the application was dismissed due to Pappas' failure to specify a new channel below Channel 60.²

As discussed in more detail below, reconsideration of the dismissal of the application is appropriate in light of changed circumstances that were not present when the July 2000 window closed. Specifically, after the July 2000 window closed, Bowling Green State University, licensee of Station WBGU(TV), Bowling Green, Ohio, filed a Petition for Rulemaking to change the DTV channel assigned to WBGU

¹ The public notice of the dismissal of the Application was published on June 16, 2003. *Broadcast Applications*, Report No. 36879 (rel. June 16, 2003). Therefore, this Petition is timely submitted.

² See *Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations*, Public Notice, 14 FCC Rcd 19,559 (1999), as amended by *Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations Extended to July 15, 2000*, Public Notice, 15 FCC Rcd 4974 (2000).

from channel 56 to channel 20. The Commission issued a Notice of Proposed Rulemaking on February 14, 2002 seeking comments on this proposal.³ To date, that proceeding remains pending.

Concurrent with the filing of this Petition, Pappas is filing a Petition for Rulemaking to seek the allotment of DTV Channel 56 at Defiance, Ohio. Should the Petition for Rulemaking be granted, Defiance will receive a first local television service.⁴ In light of this possibility, and the associated public interest benefits, Pappas requests reconsideration of the dismissal of the application.

DISCUSSION

The Commission will grant reconsideration if it can be demonstrated that reconsideration is required in the public interest, or if the request for reconsideration "relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters." 47 C.F.R. 1.106(b) (2002).

In the instant matter, the "last opportunity" would have been at the close of the July 2000 filing window, when the Commission had directed all applicants to specify channels below Channel 60. At that time, however, Pappas could not have known that Bowling Green State University intended to file a petition for rulemaking 17 months later, which would clear the way for DTV Channel 56 to be allotted to Defiance.

³ *Bowling Green, Ohio*, Notice of Proposed Rulemaking, 17 FCC Rcd 2330 (2002).

⁴ The allotment of a stand-alone DTV station also will accomplish goals set forth by both Congress and the Commission to expand DTV service.

In light of these changed circumstances, if DTV Channel 20 is substituted for DTV Channel 56 at Bowling Green, Ohio, the allotment of DTV Channel 56 at Defiance can be made. Concurrent with the filing of this Petition, Pappas is submitting a Petition for Rulemaking seeking substitution of DTV Channel 56 for NTSC Channel 65 at Defiance. A copy is attached hereto as *Exhibit A*.

CONCLUSION

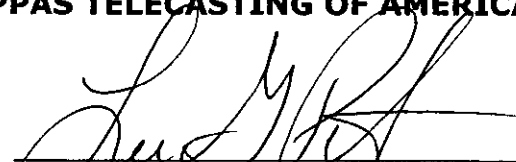
Should the Petition for Rulemaking and this Petition for Reconsideration be granted, the first local television service can be licensed to Defiance, Ohio. The potential for changing allotments at Defiance could not have been known in July 2000, when Pappas last was able to specify a new channel.

In light of these changed circumstances, along with the substantial public interest benefits, Pappas Telecasting of America respectfully requests that the Commission grant this Petition for Reconsideration and reinstate the Application.

Respectfully submitted,

PAPPAS TELECASTING OF AMERICA

By:


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July 16, 2003